IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| TORONTO DOMINION (TEXAS), INC., | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| LAIDLAW INC. | : | 00-1521 |

**O R D E R - M E M O R A N D U M**

AND NOW, this 14th day of July, 2000, plaintiff Toronto Dominion's motion for summary judgment is granted, and this case is dismissed. Fed. R. Civ. P. 56.[1] Jurisdiction is diversity. 28 U.S.C. § 1332.

Defendant Laidlaw, Inc. moved to dismiss plaintiff's complaint for failure to state a claim. Fed. R. Civ. P. 12(b)(6). In response, plaintiff Toronto Dominion moved for summary judgment. Fed. R. Civ. P. 56.

On May 15, 1997, Safety-Kleen, then a subsidiary of Laidlaw, executed a Promissory Note for $60 million in favor of Westinghouse Electric Corporation. Complaint, Exh. 1. That same day, Laidlaw executed a Guaranty agreeing to act as the primary obligor for payments on the note. Id., Exh. 2. On June 10, 1997, Westinghouse assigned its rights in both the Promissory Note and the Guaranty to Toronto Dominion.

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[1] "[S]ummary judgment should be granted if, after drawing all reasonable inferences from the underlying facts in the light most favorable to the non-moving party, the court concludes that there is no genuine issue of material fact to be resolved at trail and the moving party is entitled to judgment as a matter of law." Kornegay v. Cottingham, 120 F.3d 392, 395 (3d Cir. 1997).

Section 5 of the Guaranty notes "[i]n the event of any default by Borrower on the Obligations, Guarantor agrees to pay or perform on demand (either oral or written) all the Obligations." Id., Exh. 2. The term "Obligations" is defined by Section 2 of the Guaranty as "all debts, obligations and liabilities of Borrower" – which includes the promissory note. Id., Exh. 2.

There is no dispute that a default occurred. Defendant Laidlaw concedes that Safety-Kleen Services is in default under the Amended and Restated Credit Agreement of April 3, 1998, and that such a default constitutes an "Event of Default" as defined by Section 5.1(d)[2] of the Promissory Note, thereby triggering its obligations as the guarantor. Laidlaw disputes, however, whether this non-monetary default allows Toronto Dominion to accelerate its obligations under the Promissory Note, entitling Toronto Dominion to full payment of the $60 million – arguing acceleration is appropriate only if a monetary default occurs.

This issue is moot, however, since on May 30, 2000, Safety-Kleen failed to make a semi-annual interest payment, constituting a payment default.[3]

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[2] Section 5.1(d) states that a borrower shall be in default in the event that:

> Borrower, or Laidlaw Chem-Waste, Inc. or Laidlaw Environmental Services (Canada) Ltd., is in default under any credit agreement entered into in connection with or contemporaneously with the acquisition transaction between Rollins Environmental Services Inc. and Laidlaw, Inc. and any of its affiliates and any refinancing of such debt.

[3] On June 8, 2000, plaintiff submitted a supplemental affidavit of Warren R. Finlay, the President of Toronto Dominion, that states a payment default had occurred on May 30, 2000. Attached to the affidavit was a news

(continued...)

Since Laidlaw concedes a payment default occurred, and had previously argued Toronto Dominion is entitled to acceleration for a payment default, summary judgment is appropriate.

Edmund V. Ludwig, J.

[3](...continued)
release confirming the default. Laidlaw has submitted no argument in response to the supplemental affidavit, and facts are viewed as uncontested.